however, Verizon's position on this issue is simply an attempt to use regulation to eliminate any competition from CLEC's "FX-like" services.

b. Verizon's position on this issue is inconsistent with the manner in which Verizon treats its FX services for compensation purposes.

Traditional FX service, like Verizon offers, involves the provision of local dial tone to a customer from a remote local switch; that is, a switch other than the switch from which the customer would ordinarily receive local dial tone.[290] Verizon offers its FX service as an *exchange service* in its Local Exchange Service Tariff.[291] Thus, when a Verizon customer dials a number assigned to the customer's own legacy rate center and Verizon routes that call to a Verizon [FX] customer who happens to be located in a different legacy Verizon rate center, Verizon treats this call as a local call, not as a toll call. That is, the Verizon end user that originated the call pays Verizon's local charges for that call.[292]

Thus, an FX arrangement simply allows a customer to be assigned a telephone number and to receive calls as if he or she was located in a given exchange, regardless of the physical location of the customer. In the Verizon network, this is accomplished via the provision of remote dial tone – that is dial tone from a switch in a distant or foreign rate center connected to the native serving wire center (*i.e.,* in the home rate center) via

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290 Verizon Exh. 4 at 90.

291 In its tariff, Verizon provides the following definition: Foreign Exchange Service is exchange service furnished from one exchange to a location in another exchange by use of Series 2000, type 2006A, Channels. Verizon's Tariff goes on to state: "The long distance and local message charges and the extent of local service applicable, are the same as apply to other Local Exchange Services provided from the same foreign exchange." *Id.* at 91.

292 *Id.*

an interoffice private line facility. The FX customer pays Verizon the cost of that interexchange transport.[293]

Because of the differences in network architecture, it would not make sense for AT&T to provide a remote dial tone service such as Verizon's FX service.[294] However, AT&T does offer an FX-like local service that provides its customers with similar benefits. This local exchange service provides AT&T's customers with the ability to be assigned a telephone number in a location that is different from the customer's actual location. The service is not an FX arrangement in the traditional sense because the NPA-NNXs assigned to AT&T are resident in the same AT&T switch (wire center) that serves the customer's actual location.[295] Therefore, AT&T does not require private line arrangements such as those used by Verizon to connect the wire center serving the customer with the wire center serving the NPA-NXX.[296]

AT&T, unlike Verizon, offers this local service option at no additional charge to its end users.[297] This offering is attractive to local telephone customers with a high-inbound traffic requirement that is originated over a broad geographic area.[298] AT&T sees its service offering as a way to differentiate itself from Verizon and to take advantage of the efficiency of its different network architecture.

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293 *Id.*

294 *Id.* at 92-94.

295 *Id.*

296 *Id.* at 91-92.

297 Since AT&T's switch serves a much broader geographic area than do Verizon's individual local switches, AT&T is able to terminate traffic to customers within different Verizon legacy rate centers at comparable cost. Hence, from the perspective of AT&T's network, there is no difference in function or cost to terminate a call in one rate center versus another, and thus AT&T can offer this service at no additional charge to the customer as part of its local service offering. *Id.* at 92, 93.

Rather than compete in the market, Verizon instead is attempting to impose regulatory requirements on AT&T's service that will unnecessarily increase AT&T's costs and/or decrease its network efficiencies. Verizon argues that when a Verizon customer dials a number assigned to an AT&T assigned NPA-NXX in the customer's own legacy Verizon rate center, and AT&T picks up that call in the Verizon rate center and routes that call to the AT&T customer who happens to be located in a different legacy Verizon rate center, the call should be treated as a toll call and AT&T should pay Verizon originating access charges.[299] According to Verizon, these are toll calls because under *its* tariff such calls would be toll calls, and because, in the absence of AT&T's network, Verizon would collect toll revenues if it handled the call, or originating access charges if another carrier handled the call.[300] Therefore, Verizon reasons, these are interexchange calls, not "local" calls, and are subject to originating access charges rather than local reciprocal compensation. The end result of Verizon's argument is that rather than AT&T receiving reciprocal compensation for terminating the call originated by Verizon's customer, AT&T, under Verizon's view, would have to pay Verizon originating access charges and receive nothing to cover its termination costs.

Verizon's position on this issue is inconsistent with the manner in which Verizon treats calls to its own FX customers today. For example, today, if Verizon has a customer in Staunton that desires a Roanoke telephone number, Verizon will provide the Staunton customer FX service to Roanoke. Verizon will rate all calls from within Roanoke's local calling area to the Staunton FX customer as local calls and will charge

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299 Verizon Exh. 5 at 12.

300 *Id.*

reciprocal compensation for completing calls to that customer originated by a CLEC customer from within the Roanoke local calling area. On the other hand, if a CLEC is successful in competing with Verizon and converts Verizon's Staunton FX customer to a CLEC FX-type customer with a Roanoke NPA-NXX, Verizon will claim that all of the same calls from within Roanoke's local calling area to the very same Staunton FX-type customer are now toll calls for which the CLEC must pay originating access.[301]

Thus, Verizon uses its NXX codes no differently than the way AT&T uses them and applies reciprocal compensation no differently than the way AT&T proposes it be applied for its FX like calls. Verizon rates its FX calls as local or toll based on the customer's selected (foreign) rate center NPA-NXX, not on the physical location of the customer.[302] If the NPA-NXX of the FX customer is located in the same local calling area as the called party, Verizon treats that call as local and charges AT&T and other CLECs reciprocal compensation if an AT&T customer calls Verizon's FX customer.[303]

c. AT&T's position does not impose any additional costs on Verizon.

As noted above, Verizon does not have to bear any additional costs if AT&T's position is adopted. Verizon suggests that if CLECs are allowed to have the jurisdiction of a call determined by the NPA-NXX of the calling and called numbers, it will somehow be saddled with additional transport costs.[304] Such a claim is truly puzzling. Verizon's costs to deliver a call to AT&T do not vary depending on whether the call is destined to a customer in the calling party's native rate center or a customer in a foreign rate center.

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301 Tr. at 1989-1900.

302 *Id.* at 1828.

303 *Id.* at 1816, 1829.

304 Verizon Exh. 5 at 6.

The cost to Verizon is exactly the same. This is true because Verizon delivers all traffic bound to the same AT&T NPA-NXX to the same AT&T point of interconnection ("POI") where traffic is exchanged with Verizon's network. In other words, AT&T specifies a single POI for an NPA-NXX, regardless of the physical location of the AT&T terminating customer.[305] Since the POI to which Verizon delivers traffic is the same, Verizon's network costs to deliver traffic to that POI are necessarily the same.[306] Said another way, the CLEC's customer's location will not cause the originating ILEC's costs or functions to differ. Where there are any additional costs between AT&T's switch and the customer to complete such traffic, such costs are borne by AT&T.[307] This fact was made clear during the hearings.[308] Thus, Verizon bears no additional costs when delivering an FX-like call to AT&T.

d. AT&T's Position on its FX-like traffic is consistent with the current CPNP regime which requires Verizon to pay AT&T for its costs of terminating Verizon's calls.

As noted above, AT&T incurs termination costs to deliver a FX-Like call to its customers. The current regulatory regime requires that AT&T be compensated for these

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305 AT&T Exh. 3 at 98.

306 Verizon suggests in its Direct Testimony that an alternative solution to this issue is to require AT&T to pay the transport costs incurred by Verizon in carrying Verizon's traffic to AT&T's "IP". Verizon Exh. 5 at 12-13. To the extent that Verizon is really complaining about its transport costs to the POI if the CLEC switch is outside the local calling area of theVerizon calling party, AT&T has already addressed this point at Issue I-1, where it demonstrated that it is Verizon's obligation to deliver its traffic to a CLEC POI, as long as there is at least one POI per LATA.

307 Even Verizon's witness agrees that the CLEC bears the financial burden of the transport from the CLEC switch to the called parties' locations. Tr. at 1893.

308 As Dr. Collins explained, Verizon's responsibility for carrying originating calls terminates at the CLEC's switch. After that, the call rides on the CLEC's network and whether it is an FX or FX-like number assignment or whether it is not, the CLEC's network is used to carry the call from the CLEC's switch to the called customer and the CLEC is responsible for the full cost of such carriage. Thus, the CLEC's routing of the call from its switch to the called customer has no effect on how Verizon routes such calls or its costs. Tr. at 1724.

termination costs. The FCC recently acknowledged this in the *Intercarrier Compensation NPRM,* where it stated: "Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection regimes may be referred to as "*calling-party's-network-pays*" (or CPNP)".[309] Thus, the fundamental principle of the CPNP regime is that the party collecting the revenue for a call (*i.e.*, the originating party in the case of local exchange service) compensates the other party for the use of its network. Therefore, (consistent with this principle), AT&T is lawfully entitled to recover its costs to terminate local exchange traffic originating on Verizon's network. However, Verizon's position that AT&T should compensate Verizon in the form of access charges for AT&T's FX-like traffic when, in fact, Verizon is collecting the revenue for these calls, turns the current CPNP regime on its head.

The Commission should come to the only rational conclusion, that AT&T's FX-like traffic should be compensated in the same manner as all other telecommunications traffic other than exchange access and information access traffic, and thus Verizon should pay AT&T reciprocal compensation for terminating FX like calls. This conclusion is consistent with Michigan Public Service Commission decisions which have repeatedly found that FX calls should be treated as local for reciprocal compensation purposes:

> The Commission rejects the proposal [by Ameritech] to *reclassify* FX calls as non-local for reciprocal compensation purposes. Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one LEC's customers to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call. As a matter of historical convention, the routing of that call, i.e.,

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309 *Intercarrier Compensation NPRM* at ¶ 9.

whether or not it crosses exchange boundaries, has not been equated with its rating, i.e., whether local or toll. Moreover, the discretion that CLECs exercise in designing their local calling scopes is a competitive innovation that enables them to provide valuable alternatives to an ILEC's traditional service. The Commission finds no reason to change these standards, particularly if the end result would be an unnecessary restriction on the services that customers want and need.[310]

e. AT&T's Position is Consistent with the Commission's ISP Remand Order.

AT&T's position is also consistent with the Commission's recent *ISP Remand Order*. The *ISP Remand Order* does not excuse Verizon from paying reciprocal compensation on AT&T's FX like traffic. As the Commission recognized in its order, all 'telecommunications" traffic is subject to the reciprocal compensation provisions of the Act, set forth in 47 USC § 251(b)(5), § 252(d)(2), whether the traffic is local or non-local.[311] FX-like traffic is clearly 'telecommunications' within the meaning of the Act.[312]

In addition, although Congress, in § 251(g) of the temporarily "grandfathered" pre-existing federal compensation rules governing "exchange access" and "information access" traffic between, on the one hand, LECs which were in existence on February 8, 1996, and, on the other hand, IXCs or information service providers; there were no such rules with respect to virtual NXX traffic when the Act was passed, and thus § 251(g)

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310 Opinion and Order, *In the Matter of the Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation,* Michigan Public Service Commission, Case No. U-12969, at pages 10-11 (January 23, 2001). (*emphasis added*). In the MCImetro Arbitration proceeding, as well, the North Carolina Commission made the same finding. Recommended Arbitration Order, *In the Matter of Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996,* North Carolina Utilities Commission, Docket No. P-474 Sub 10, at 66-74 (April 3, 2001).

311 *ISP Remand Order* at ¶¶ 26, 34.

312 Telecommunications is defined in the act as "the transmission, between points specified by the user, of information of the user's choosing, without change in the form or content of the information received." 47.U.S.C. §153 (43).

cannot be relied upon by Verizon to excuse its payment of reciprocal compensation for this traffic.

However, even if such pre-existing compensation rules had existed, they would not be grandfathered by § 251(g), because virtual NXX traffic is not "exchange access." "'[E]xchange access' means the offering of access to telephone exchange access services or facilities for the purposes of originating or terminating telephone toll calls."[313] "Telephone toll service," in turn, is defined as "telephone service between stations in different exchange areas *for which there is made a separate charge not included in contracts with subscribers for exchange service.*"[314] As explained above, AT&T does not impose a separate charge on its end users for its FX like service, but instead includes it as part of its basic local service offering. Therefore, by definition, AT&T's FX-like service is not a toll service and is not included within the exemption from reciprocal compensation.[315]

f. AT&T's FX like service does not manipulate or misuse telephone number resources.

Verizon suggests that AT&T is manipulating and misusing valuable numbering resources through the provision of its FX-like services.[316] Verizon is wrong. CLECs' use of telephone numbers to provide FX-like services is just as legitimate a use of

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313 47 U.S.C. § 153(16).

314 *Id.* 47 U.S.C. § 153(48) (emphasis added).

315 *See Opinion and Order, Petition for Arbitration to Establish an Interconnection Agreement between TDS Metrocom, Inc. and Ameritech Michigan*, Case No. U-12942, at 22 (Mich. PSC Sep. 7, 2001) Although FX like services can be provided to ISPs, the *ISP Remand Order* still does not excuse incumbents from paying reciprocal compensation for the termination of traffic to those ISPs. Rather, reciprocal compensation would have to be paid pursuant to the detailed framework established in ¶¶ 77 to 88 of the *ISP Remand Order*.

316 Verizon Exh. 5 at 8, 9.

numbers[317] as the assignment of telephone numbers to support any other service or technology.

The fact is that Verizon's proposal would consumer far more telephone numbers than AT&T's proposal. To meet Verizon's requirement that a customer's NPA-NXX have geographical relevance to the customer's physical location, a CLEC would have to have NPA-NXX telephone numbers in every rate center in which they have a customer. This is true even when the CLEC's customer would be satisfied with a number assigned from the NPA-NXXs currently available to the CLEC. Thus, to meet Verizon's requirement, the CLEC would have to request a block of numbers in the customer's geographical area and assign one such number to the customer, regardless of whether or not the customer even wanted a number in that NPA-NXX.[318] This result is certainly more wasteful of numbering resources than the use of numbering resources associated with AT&T's approach, *i.e.*, assignment of NXXs without necessarily having a geographic correlation.

g. Verizon's proposal creates significant technical and billing problems.

Another problem with Verizon's proposal is that it would create significant technical and billing challenges. In order to implement Verizon's proposal that AT&T's FX-like traffic be treated as toll traffic rather than as local exchange traffic, the Commission would have to order that this traffic be segregated and somehow tracked separately from other telecommunications traffic. This would be an extremely costly endeavor with no public benefit. The industry would have to change the rules on how

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317 Verizon admitted during the hearings that it is not taking the position that the CLEC Petitioners are not serving any customers in the exchanges in which they are taking NXX codes. Tr. at 1909.

318 *Id.* at 56.

intercarrier traffic has been rated up to now. The current industry standard method for rating and billing calls between carriers is to measure the distance between the V & H coordinates associated with the NPA-NXX of the originating and terminating end users.[319] This ability is built into all of the carriers' systems and the details are fleshed out in interconnection agreements.

Verizon's proposal would change all of this and require carriers to somehow segregate the Virtual FX calls and rate them separately. Virtual FX traffic is not separately identified and tracked by AT&T or, to our knowledge, by any other CLEC at this point. In fact, Verizon's witness confirmed this when he testified that he was not aware of any specific mechanism that exists that would enable carriers to identify the actual end points of a call.[320]

Unless regulators are willing to disassociate the manner in which the telephone industry has historically rated wholesale and retail calls from the way calls are determined to be subject to reciprocal compensation under § 251 (b)(5) of the Act, then Verizon will have to change the way calls to its FX services are rated. That is, if the Commission accepts Verizon's assertion that *physical location* of the caller and called party are the appropriate determinant of the jurisdiction of a call, then such determination should be applied uniformly to the rating of all calls, not just a subset favorable to Verizon. Such a change would have a major impact on the entire industry and would impact the call recording, rating and billing systems used by Verizon, other ILECs,

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319 AT&T Exh. 3 at 96-97. This method for rating and billing is applied consistently across all types of traffic, including for a variety of different types of traffic that have originating and terminating points that are different than the NPA NXXs associated with the calls. Tr. at 1804-1808, 1809-1811.

320 *Id.* at 1813, 1815, 1905.

CLECs' and Independent Companies.[321] The current, long standing industry convention of using the originating NPA-NXX and the terminating NPA-NXX to rate a call for billing purposes has served the industry well over many decades and Verizon has offered no compelling reason to change it now.

h. Verizon's "solution" is nothing more than a proposal to eliminate CLEC's FX-like service and promote Verizon's FX service.

Verizon suggests that the answer to the Virtual FX issue is for the CLEC customer to purchase a direct interoffice private line from its tariff. Verizon says this 'solution' "...would allow the Roanoke CLEC customer to order a direct facility [from the customer's physical location] to the Staunton end office, thereby creating, in essence, an extended local loop."[322] Note, that Verizon's "solution" in essence is for the CLEC not to take advantage of the efficiencies inherent in its own network, but instead purchase from Verizon a facility that it does not need.[323] Thus, AT&T would be forced to provide its competing service in a less efficient and more expensive manner[324] than it could using its own network – which would in effect eliminate the viability of its service.

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321 AT&T provided details regarding the various rating problems associated wit Verizon's proposal in Exh. AT&T 8 at 52-55.

322 Verizon Exh. 5 at 7.

323 As Mr. Schell explained, because AT&T has a single switch and our customer's dial tone is also resident in the switch, there is nothing that AT&T needs to connect. Tr. at 1908.

324 Of course, Verizon would only provide these facilities at special access rates. *Id.* at 1907.

Issue III.5 *Tandem Rate* **Where the geographic coverage of an AT&T switch is comparable to that of a Verizon tandem, should AT&T and Verizon receive comparable reciprocal compensation for terminating the other parties' traffic?**

I. AT&T has demonstrated that its switches meet the standard set forth in Section 51.711(a)(3) of the Commission's Rules, 47 C.F.R. § 51.711(a)(3), such that AT&T should be compensated at Verizon's tandem rate for termination of Verizon's traffic delivered to all of AT&T's switches. [Issue III-5]

a. Introduction.

There can be no serious debate that AT&T is justified in charging the applicable tandem switch rate when it terminates Verizon's traffic.[325] The FCC's *Local Competition Order* stated, without qualification, that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LECs tandem switch the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.[326] Rule 51.711(a)(3) implements that finding.[327] Two recent FCC pronouncements affirm that so long as a CLEC's switch serves a geographic area comparable to that served by the ILEC's tandem, the CLEC is entitled to the tandem termination rate for the traffic it terminates.[328] The U.S Court of Appeals for the Ninth Circuit has also ruled that a carrier serving a geographic area

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325 *See* Arbitration Petition at fn 72.

326 *Id.; see also* 47 C.F.R. 51.711(a)(3) which states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LECs tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem termination rate.

327 Thus, the underlying rationale for the Rule is to establish a proxy for the interconnecting carrier's costs when it terminates a call from an ILEC to a CLEC customer.

328 In the *InterCarrier Compensation NPRM* at ¶ 105, the FCC clearly stated that only the geographic test must be met before carriers are entitled to the tandem interconnection rate. Tandem functionality, the FCC stated, is not relevant to Rule 711(a)(3). The Commission reiterated this clarification in a May 9, 2001 letter relating to a Sprint PCS request on this same issue. *Letter from Thomas J. Surgrue, Chief, Wireless Telecommunications Bureau of the FCC, and Dorothy T. Attwood, Chief, Common Carrier Bureau of the FCC, to Charles McKee, Senior Attorney, Sprint PCS* (May 9, 2001).

comparable to that served by U.S. West's tandem switches must be compensated at the tandem rate.[329] Verizon has acknowledged that tandem functionality is *not* a relevant consideration.[330]

Nevertheless, Verizon now asserts, with no legal basis for its claim, that the geographic comparability test requires a demonstration that the CLEC switch *actually* serves a comparable geographic area to that served by the ILEC (*i.e.,* the CLEC has local exchange customers throughout a comparable geographic area), rather than demonstrating that the CLEC switch *is capable of* serving a geographic area comparable to the ILECs (*i.e.,* the CLEC has deployed a network or has access to network components such as UNE loops throughout a comparable geographic area, but does not necessarily have customers throughout a comparable geographic area).[331] As demonstrated below, Verizon's proposal is just another bite at the apple, is without merit, and should be rejected.

For one thing, there was no discussion in the *Local Competition Order* about the need to demonstrate that a switch "actually serves" a comparable geographic area to the ILEC. Nor is there any language in the Rule itself that supports Verizon's interpretation. Nothing in the rule points to any type of formula for examining number of customers, dispersion of customers or any other factor that might be relevant in supporting Verizon's proposed "actually serve" standard.

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329 *U.S. West Communications, Inc. v. Washington Utilities and Transportation Commission, AT&T Wireless Services, Inc.*, CV-97-05686-BJR, No. 98-36013 (July 3, 2001) (reversing a ruling by the State of Washington Utilities and Transportation Commission which had been affirmed by the U.S. District Court for the Western District of Washington).

330 Tr. at 1600.

331 Verizon Exh. 5 at 27.

Second, no state commission ever supported Verizon's view. For example, the Michigan PSC concluded in an Ameritech/MediaOne arbitration that MediaOne's SONET network did serve an area comparable to that served by SBC-Ameritech:

> After reviewing the facts presented to the arbitration panel, the Commission is persuaded that the area served by MediaOne's SONET network is comparable to the area served by Ameritech's tandem switch. In so finding, the Commission is aware that MediaOne does not yet have the same number of customers or locations of customers that the incumbent currently has. Yet the Commission is persuaded that MediaOne's switch is serving a geographic area that is broad enough to be considered comparable to an Ameritech tandem. MediaOne is currently licensed and holding itself out as a telecommunications provider in 42 communities in Southeast Michigan. In its orders licensing MediaOne to serve, the Commission held that MediaOne was capable of providing service to every person within the licensed areas. In the Commission's view, MediaOne sufficiently demonstrated that it serves a geographic area comparable to an Ameritech Michigan tandem.[332]

Federal courts also agree. The US District Court for the District of Minnesota in US West Communications, Inc. v. Minnesota Public Utilities Commission (D.Minn. March 30, 1999), slip op. at 53, upheld a Minnesota Public Utilities Commission arbitration decision finding that MCI Metro's switches had the capability of ultimately serving an equivalent geographic area to that covered by US West's tandems, even though MCI was not actually providing service throughout US West's territory.

The Texas decision Verizon cites is not on point. Texas was focusing on the tandem functionality test that, as we stated above, is not applicable.[333] Thus, the decision is not relevant.

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[332] *Petition of MediaOne Telecommunications of Michigan, Inc/ for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan,* Michigan Public Service Commission, Case No. U-12198, Opinion and Order, (March 3, 2000) ("MediaOne Order") at 18.

[333] In the case cited by Verizon, (*See* Verizon Exh. 5 at 28) the Texas PUC stated "...to receive reciprocal compensation for performing *tandem functions* (emphasis supplied) the CLEC must demonstrate that it is actually serving the ILEC tandem area using *tandem like functionality,*

Last, Verizon has presented no evidence as to why its proposed interpretation of the Rule is superior. As noted above, the intent of the Rule is to provide a proxy for a CLEC's costs of termination of a call from an ILEC to a CLEC customer. Verizon has provided no explanation or cost evidence as to why a CLEC that has a single customer in an area that is served by a CLEC network, that is designed to serve an area comparable to the ILEC's, should not be compensated at the tandem rate. It has provided no evidence as to why its tandem termination rate would not be an appropriate proxy for the CLEC's costs of termination in such an instance.[334]

Even if Verizon's proposal were defensible under the law and the FCC's rules, it is completely undefined, subjective and administratively infeasible. Even Verizon is not exactly sure how its proposed standard should be defined or implemented.[335] It did not provide a specific proposal in its testimony, and its witness was unable to propose anything specific during cross.[336] Rather, Verizon's witness only stated that he thought the number of customers and dispersion of customers would be relevant

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instead of just demonstrating the capability to serve the comparable geographic area. In making this *functionality* determination. . ." *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Arbitration Award, Texas PUC at 28-29 (July 2000) (emphasis supplied).

334 One thing is clear about Verizon's proposed interpretation, however. It has the effect of penalizing CLECs entering the market, because they would not yet have had sufficient time to build their customer bases to be "comparable" to the size and scope of the ILEC's.

335 Given that Verizon didn't propose a specific formula for meeting its "actually serves" test, it of course is impossible for AT&T to demonstrate that it could meet Verizon's test. If Verizon had actually proposed a specific test, even though AT&T asserts that an actually serves test is inappropriate, AT&T would have had the opportunity to demonstrate that it could met this test as well. However, Verizon's approach of not proposing a specific test enables it to simply argue – as its counsel made a point of doing – that AT&T has not met the "test". *See* Tr. at 1612 in which Verizon's attorney makes the point of "summarizing" Verizon's position that AT&T has not met the "actually serves" test.

336 Tr. at 1601.

considerations.[337] He did not specify, however, the appropriate formula or combination of factors.[338] Instead, he acknowledged that there could be a myriad of possible combinations or examples that could be considered.[339] He also acknowledged that because a CLEC's customer base and serving areas change over time, a CLEC's ability to meet the formula or standard would also change over time.[340] That is, because of the change in a CLEC's customer base, one day a CLEC may not be able to meet the standard, while the next day it could. In fact, if a CLEC lost some customers to a competitor, it could also lose its ability to receive the tandem rate – depending on the formula that was adopted.

b. Verizon's proposed average termination cost test amounts to a revision of Section 51.711(a)(3) of the Commission's rules and, therefore, should be rejected.

Verizon's alternative proxy proposal is that if a CLEC demonstrates that it employs a single tier interconnection structure – where its switches perform both tandem and end office functions – then the reciprocal compensation rates that the CLEC charges Verizon should be the average rate charged by Verizon to the CLEC for call termination during the previous calendar quarter.[341] Obviously this proposal has nothing to do with whether a CLEC switch serves a comparable geographic area to the area served by the

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337 *Id.*

338 *Id.*

339 For example, should 1000 customers all located in one local calling area qualify a CLEC for the tandem rate, or would a 50 customer spread over seven local calling areas be more appropriate? Would both combinations be appropriate? Is number of customer more important than customer dispersion? Clearly, the number of possible combinations is endless given the purpose behind the Rule, and the record provides not a scintilla of evidence as to what formula or formulas would represent the best proxy for a CLEC's cost of termination.

340 Tr. at 1602.

341 Verizon Exh. 5 at 28.

CLEC's switch. Therefore, the proposal is clearly inconsistent with § 51.711 (a)(3) and, thus, amounts to proposed revision to the Rule. For this reason alone, the proposal should be rejected.

The proposal is also fundamentally flawed because Verizon has not presented a shred of evidence as to why its average rate of termination proposal would be a more precise proxy for a CLEC's cost of termination than the proxy already established by the FCC. Because the parties use a one way trunking arrangement, Verizon's average termination costs are completely unrelated to the termination costs that AT&T will incur for terminating Verizon traffic.[342] This is because Verizon's costs to terminate AT&T's traffic are driven by AT&T's choices regarding whether it will deliver traffic to a Verizon tandem or a Verizon end office. AT&T's choices where to deliver its traffic are unrelated to where Verizon delivers its traffic to AT&T – the latter being the factor which drives AT&T's costs of termination.

c. AT&T's switches meet the geographic comparability test.

AT&T's switches meet rule 51.711(a)(3)'s "geographic comparability" test. AT&T offers local exchange service in Virginia utilizing three separate networks. AT&T Communications of Virginia, Inc. ("AT&T Comm.") has deployed 4ESS switches, which function primarily as long distance switches, and 5ESS switches, which act as adjuncts to the 4ESS switches. AT&T Comm. has the ability to connect virtually any qualifying local exchange customer in Virginia to one of these switches through dedicated access services offered by AT&T or another access provider.[343] TCG Virginia, Inc. provides local exchange services using Class 5 switches. TCG is able to connect virtually any

[342] Tr. at 1604; AT&T Exh. 8 at 65.

customer in a LATA to the TCG switch serving that LATA either through (1) TCG's own facilities built to the customer premises, (2) UNE loops provisioned through collocation in Verizon end offices, or (3) dedicated high-capacity facilities (special access services or combinations of UNEs purchased from Verizon).[344] MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. ("MediaOne") provide local exchange services using a Class 5 switch and are able to connect virtually any customer in its cable TV franchise area.[345] Each network satisfies 47 C.F.R. § 51.711 (a)(3). The maps marked as Exhibit DLT-8 attached to AT&T Exhibit 3 show that each and every AT&T, TCG and MediaOne switch covers a comparable or greater geographic area as that covered by the corresponding Verizon tandem switch.[346] Accordingly, AT&T is entitled to be compensated at the Verizon tandem rate for termination of Verizon's traffic delivered to all of AT&T's switches.

Issue V.8 Should the contract terms relating to the Parties' joint provision of terminating meet point traffic to an IXC customer be reciprocal, regardless of which Party provides the tandem switching function? Put another way, should the contract terms make clear that AT&T and Verizon are peer local exchange carriers and should not bill one another for meet point traffic?

AT&T addressed this issue along with issue V.1 in the Network Architecture section, *supra.*

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343 AT&T Exh. 3 at 105, 106.

344 *Id.*

345 *Id.*

346 Statewide and LATA-specific maps were created by using data contained in the Local Exchange Routing Guide (LERG). The LERG, produced by Telcordia Technologies, contains routing data that supports the current local exchange network configuration within the North American Numbering Plan (NANP) as well as identifying reported planned changes in the network. The LERG data in conjunction with Map Info V-4.1.1.2, a commercial mapping software package, was used to prepare the state-wide and LATA-specific maps. AT&T Exh. 8 at 107.

UNBUNDLED NETWORK ELEMENTS ISSUES

Issue III-6 Under the FCC's Rules as currently in effect, must Verizon provide to AT&T new combinations of UNEs that Verizon ordinarily combines for itself, and under what rates terms and conditions must it provide them?

I. Under the FCC's Rules as currently in effect, must Verizon provide to AT&T new combinations of UNEs that Verizon ordinarily combines for itself, and under what rates terms and conditions must it provide them? [Issue III-6]

Contrary to Verizon's assertions, AT&T is not asking the Commission to challenge the Eighth Circuit or to rewrite its current rules on UNE availability.[347] Rather, AT&T is simply asking the Commission to clarify that the "currently combine[d]" standard, as used in the Commission's current Rule 315(b), includes such UNEs as are ordinarily, commonly, or regularly combined in Verizon's network, whether or not they are actually combined for the particular customer or location that AT&T seeks to serve.[348] Stated another way, the Commission should make it clear that the current Rule 315(b) requires the provision of new combinations that are ordinarily combined in Verizon's network. This is precisely what the Illinois Commerce Commission recently did by its Order of October 16, 2001 and what the commission should do here as well.[349]

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347 VZ Exh. 15 at 3-5.

348 By way of example and not limitation, currently combined UNEs would be those that have tariffed services analogs, or for which Verizon has processes in place. Tr. at 194-5.

349 Illinois Commerce Commission, *Investigation into the compliance of Illinois Bell telephone Company with the order in Docket 96-0486/0569 Consolidated regarding the filing of tariffs and the accompanying cost studies for interconnection, unbundled network elements and local transport and termination and regarding end to end bundling issues*, Docket 98-0396, Order (October 16, 2001)("Illinois Order") at 74-90. The Illinois Commission ruled that it has the legal authority (both as a matter of independent state law and federal law) to order Ameritech to provide combinations of unbundled network elements ordinarily combined in its network, and that public policy commands that Ameritech be required to provide such combinations if the Commission is to promote mass market competition for Illinois residential and small business customers. The Commission required Ameritech to provide CLECs combinations of unbundled network elements that Ameritech ordinarily combines for its own use or for the use of its end user customers, including the unbundled network element Platform and Enhanced Extended Links, or EELs.

As the Illinois Commission recognized, this is no stretch of the current language of the Commission's rules because the Commission's rule on combinations must be read as a whole, even though sub-parts (c) through (f) have been vacated. Thus, Rule 315(b) was clearly intended to encompass the entire universe of UNE combinations that were **not** covered by the vacated Rules 315(c)-(f), which applied by their own terms to UNEs that "are not ordinarily combined" in an ILEC's network. By the same token, Rule 315(b) would apply to all UNE combinations that **are** ordinarily combined. As the Illinois Commission found, a "reasonable reading of 47 C.F.R. Section 315(b) encompasses combining UNEs that the ILEC currently combines, even if they are not yet specifically connected."[350] The Illinois Commission's analysis is directly on point and absolutely correct:

> On its face, Rule 51.315 distinguishes between the types of combinations that ILECs "currently combine," *see* Rule 51.315(b), and those the ILECs do not "ordinarily" combine, *see* Rule 51.315(c). The FCC distinguished between these two types of combinations because only the latter raised issues of technical feasibility....Therefore only truly new types of combinations were intended to be addressed in Rules 51.315(c)-(f)....**Combining elements that are currently or ordinarily combined in the ILEC network (a loop and a port, for example) raises no issues of technical feasibility, and plainly is meant to be addressed in Rule 51.315(b), and not in the technical feasibility Rules 51.315(c)-(f).**[351]

That this is a reasonable interpretation of the Commission's language and intent is demonstrated by the fact that a number of other state commissions have ruled the same way. The Kentucky PSC has ruled in the context of an arbitration between AT&T and BellSouth that "we conclude that 'currently combines,' as set forth in ... FCC Rule 315(b) should be given the same meaning as 'ordinarily combines,' and BellSouth should

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[350] *Illinois Order* at 82.

[351] *Id.* at 83 (emphasis supplied).

combine for AT&T requested UNEs *if* those UNEs are ordinarily combined in BellSouth's network."[352] The Georgia Commission has found that the proper reading of "currently combines" means network elements that are "ordinarily combined within their [BellSouth's] network, in the manner in which they are typically combined."[353] The Tennessee and the Michigan commissions have interpreted the Commission's rules the same way.[354] So did the Wisconsin PSC, which found that it "is just and reasonable, and in the public interest, convenience, and necessity to order Ameritech to make available EELS (both new and by special circuit conversion) and UNE-Ps (both new and existing combinations) at prices and on such terms and conditions that are reasonable because competition will be enhanced, consumer choices increased, and existing telecommunications facilities will be efficiently utilized."[355]

This interpretation is the only interpretation that serves the overarching pro-competitive objectives of the Act, as the state commissions ruling on this issue have found.[356] The Illinois Commission stated it well and succinctly:

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352 Kentucky Public Service Commission, *Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Case No. 2000-465, Order (June 22, 2001)("Kentucky Order") at 2.

353 Georgia Public Service Commission, *In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U (Feb. 2, 2000) ("Georgia UNE decision").

354 "I move to define the term "currently combines" to include any and all combinations that BellSouth currently provides to itself anywhere in its network thereby rejecting Bellsouth's position that the term means already combined for a particular customer at a particular location." Tennessee Regulatory Authority, Intermedia/BellSouth Arbitration Hearing, Transcript at 7-8. *See also,* Michigan Public Service Commission, *In the matter, on the Commission's own motion, to consider Ameritech Michigan's compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996*, Case No. 12320,Opinion and Order (Jan. 4, 2001), at 9-10.

355 Public Service Commission of Wisconsin, *Investigation Into Ameritech Wisconsin Operational Systems Support*, Docket 6720-TI-160 (Sept. 25, 2001) ("Wisconsin Order") at 9.

356 *See e.g., Kentucky Order* at 3.

> These policies (if permitted) [not providing new UNE-Ps or EELs] would deny the benefits of competition to new customers, prevent customers of UNE-P based competitors from ordering additional lines, and prevent CLECs with their own networks from efficiently extending service over a broader area. Obviously, such restrictions cannot be justified on *policy* grounds. There is no good reason to actually *sanction* a result where existing lines can be served by UNE combinations, but new lines, second lines, or extended lines cannot.[357]

The use of Verizon's network elements and combinations is essential to allow AT&T to provide a broad array of telecommunications services to customers in these areas. If AT&T is permitted nondiscriminatory use of Verizon's network elements and combinations, (including EELs and combinations ordinarily found in Verizon's network), AT&T's coverage for traditional local services (*i.e.*, residential and business POTS) can compete with that of Verizon in Virginia. Without use of Verizon's network elements or combinations, AT&T will remain unable—both technically and economically—to provide telecommunications services ubiquitously over the broad geographic area currently served by Verizon in Virginia. Moreover, Verizon's proposed limitation on UNE combinations effectively precludes AT&T from providing new lines to existing customers and from providing certain services to new customers, although in both circumstances Verizon would be able to do so. The practical implication of allowing Verizon to interpret applicable law is that AT&T will be forbidden to serve certain groups of customers via UNE combinations. Such restrictions serve to only thwart local competition in Virginia.

Verizon's 11th-hour offer in its Direct Testimony to provide some limited UNE-P combinations is too little and too late.[358] The offer—if it is such—fails to cure the

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357 *Illinois Order* at 81 (emphasis in original).

358 Verizon Exh. 15 at 4.

deficiencies of Verizon's position. First, Verizon's offer in no way backs-off its assertion that it is not required to provide UNE combinations that are ordinarily combined. This is an erroneous view that the Commission should reject as so many commissions have already done. Second, the details of Verizon's offer are far from clear and have not been clarified by Verizon. Indeed, Verizon has not offered any interconnection agreement language to effectuate its offer, despite conceding the need to do so at the hearing.[359] Moreover, despite promising to provide it, there has yet to be a proffer of this illusory effectuating language.[360] Thus, as of today AT&T has not had the opportunity to review Verizon's agreement language, and more importantly, the Commission has no Verizon proposed language before it for consideration. As it stands, there is no offer on the table.

In any event, to the extent that it can be parsed from Verizon's testimony, the offer is severely limited. Importantly, it is limited soley to UNE-Ps and excludes any other combinations, such as EELs, that may be ordinarily and customarily combined by Verizon in its network for its own use.[361] It is also limited to facilities that are physically in place and "currently combined," even if not activated for retail service.[362] Thus, Verizon would even exclude any UNE-Ps from its offer if they would require new construction, such as expansion of central office facilities and cable build-outs.[363] The determination of when the "new construction" exclusion would disqualify an AT&T UNE-P order is entirely up to Verizon and AT&T could not know in advance of its order

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359 Tr. at 69.

360 *Id.* at 297-298.

361 *Id.* at 58.

362 The need for minor activation activity, such as cross-connects or switch translations, apparently would not disqualify a UNE-P from Verizon's offer (Tr. at 58), nor the need to "dispatch to drop wire" to a cable terminal (*Id.* at 59).

whether the UNE-P will be provisioned.[364] Verizon apparently expects to extract a glue charge for such UNE-Ps, in the form of "non-recurring charges associated with activating the facilities."[365] Finally, the offer could be withdrawn by Verizon at the expiration of the interconnection agreement.[366] The Wisconsin PSC rejected Ameritech's similar offer to make combinations available on a "voluntary" and highly restricted basis.[367] This Commission should do likewise and prohibit applicability of any "glue" charges.

This Commission stands in the shoes of the Virginia State Corporation Commission in this arbitration and as such, the Commission is fully empowered to resolve the issues as the Virginia State Corporation Commission might. The federal regulations are the floor, not the ceiling, of what a state commission may require in regard to the UNEs and UNE combinations that an ILEC should be obligated to provide, in order to foster competition in a state. As has been demonstrated, in order to promote local competition, hosts of other state Commissions have already ordered provision of ordinarily combined UNEs and if Virginia were to rule, it is safe to say they too want to promote competition.

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363 *Id.* at 60-61.

364 *Id.* at 61: "We wouldn't know until an order is placed whether there are facilities available or not".

365 Verizon Exh. 1 at 4.

366 *See* Tr. at 64.

367 *Wisconsin Order* at 19: "Ameritech's proposed amendment to its interconnection agreements allows CLECs to order new combinations of UNEs as EELs or as UNE-Ps, subject to a number of restrictions."... The amendment contains a provision which would terminate the amendment after a set amount of time.... Such a time limit would make it difficult for a CLEC to develop a long-term entry strategy using these products, since the CLEC would have no assurance that the products would be available in the future."

There is ample current legal authority for a state to adopt the interpretation that AT&T advocates, as shown by the state actions cited earlier.[368] Tellingly, the U.S. Court of Appeals for the Ninth Circuit has upheld an interconnection agreement that required USWest to provide combinations of UNEs notwithstanding the 8th Circuit's vacating Rules 315(c)-(f). It ruled that the 8th Circuit's decision simply "means ... that the Act does not currently mandate a provision requiring combination. Our task is to determine whether such a provision 'meets the requirements' of the Act, i.e., to decide whether a provision requiring combination violates the Act."[369] It ruled that the state commission could mandate combinations under the Act.[370] The 9th Circuit had previously observed that "network elements may be leased in discrete parts, but 'does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form."[371]

If the Commission finds that Virginia would be best served by requiring Verizon to provide UNEs that are currently ordinarily combined, although not necessarily combined in service to a particular customer, the Commission may so order in this arbitration. Like the Illinois, Kentucky Georgia, Tennessee, Wisconsin and Michigan commissions before it, the Commission should rule in this arbitration that the

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368 *See e.g., Wisconsin Order* at 16.

369 *MCI Telecommunications Corp. v. US West Communications*, 204 F 3d 1262, 1268 (9th Cir. 2000), (emphasis supplied), *cert. denied*, 120 S. Ct. 2741 (2000).

370 *Id.*

371 *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1121 (1999) (*quoting* the US Supreme Court's decision in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 737 (1999)).

Commission's current rules should be interpreted consistent with the pro-competitive objectives of the Act.[372]

Issue III-7 Does Verizon have the right to impose operational requirements, in addition to the interim use restrictions on the conversion of special access to UNE combinations prescribed by the Commission, that further limit AT&T's ability to connect a UNE or UNE combination to other services, such as the retail and wholesale offerings of Verizon?

Rather than argue the case against the current restrictions upon converting special access services to UNE combinations under the Commission's interim rules in this arbitration, AT&T addresses the operational roadblocks that have made it impossible for AT&T to obtain from Verizon the special access conversions to UNEs to which AT&T is entitled under the Commission's interim rules. The operational issues requiring resolution are the following:

a. Modification to the physical configuration of the special circuit/UNE combination *should only occur when requested by AT&T* (discussed under Sub-Issue III.7.A);

b. Conversion of an access service to a UNE combination *should not result in degradation of operational support* provided for the UNE combination compared to the previous special access service configuration (discussed under Sub-Issue III.7.A);

c. The process to convert access services to UNE combinations s*hould not interject needless cost or unduly delay the desired conversion* (discussed under Sub-Issue III.7.B);

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372 Verizon argues that the Commission has already ruled that it would not act to exercise the powers of the Virginia Commission in this arbitration. Direct Testimony of Detch, *et al.* at 5. But Verizon's own cites to the transcript belie that claim, for it shows only that the Chief of the Common Carrier Bureau is "disinclined to exercise that authority." *Id.* With all due deference to the Bureau, AT&T is not abandoning its right to argue to the Commission that the Commission is empowered to exercise the Virginia Commission's authority, and should do so if it believes it necessary to reach a proper result on this issue.

d. Verizon's failure to effectuate special access conversions to UNE combinations *should not delay the effective date of the new rates for UNE combinations* (discussed under Sub-Issue III.7.B); and

e. Conversion of access services to UNE combinations *should not be limited by unjust and unreasonable application of term or volume liabilities in Verizon's access service pricing plans* (discussed under Sub-Issue III.7.C).

Because Verizon has not substantively addressed or rebutted any of the issues in this set in its Direct or Rebuttal Testimony, AT&T's showings are unchallenged and should be adopted by the Commission as proposed by AT&T. Nevertheless, AT&T will summarize its positions and advocacy in the sub-issues to follow.

Further, Verizon's steadfast opposition to effectuating special access conversions to UNE combinations in the past, using obstacles provided to Verizon by regulatory and legal issues, should not be countenanced in the future. The Commission is currently considering the applicability of restrictions on the conversion of special access to UNE combinations. There is no justification to permit Verizon to reap further monopoly profits by delaying implementation at the state level following that decision. To preclude extensive delays, AT&T proposes language to § 11.13.1 of the interconnection agreement to eliminate any need for lengthy negotiations following Commission resolution of the applicability of use restrictions.

Issue III-7a Where AT&T requests that existing services be replaced by UNEs and/or UNE Combinations, may Verizon physically disconnect, separate, alter or change in any other fashion the equipment or facilities that are used, without AT&T's consent?

The confluence of law and fact demonstrate that a conversion of special access to a UNE combination should not result in any physical disconnection, separation, alteration

or change in the equipment and facilities of the combination. As a matter of law, the physical disruption of combined elements is not permitted under existing Commission rules. FCC rule 51.315(b) provides "[e]xcept upon request, an Incumbent LEC shall not separate network elements that the Incumbent LEC currently combines." As a matter of fact, the loops and transport facilities used to provide local exchange services are the very same loops and transport facilities that are used to provide exchange access services. In both cases, they perform the same function—transporting communications between a customer premises and a carrier's network. Only artificial pricing distinctions—and not physical differences—account for any difference between a loop and transport configuration called special access and a loop and transport configuration called a UNE combination (or EEL).

Nevertheless, Verizon has asserted that it is frequently "necessary for Verizon to 'physically disconnect, separate, alter or change' the equipment or facility in order to complete" AT&T's request.[373] However, this assertion has been laid to rest by Verizon's own testimony in the hearing, where Verizon's witnesses conceded that: (1) the conversion process from special access to EELs "is essentially a billing process;"[374] (2) the conversion of special access to a UNE combination would not require any disconnection;[375] and (3) the disconnection of facilities in conversions to UNE combinations would be "fairly rare," and would happen in only "some rare instances."[376]

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373 *Verizon Response* dated May 31, 2001, Attachment A at 78.

374 Tr. at 95.

375 *Id.* at 243.

376 *Id.* at 196.

The examples relied upon by Verizon provide absolutely no credible support to the Verizon position. All the identified examples supplied by Verizon are either exceptionally rare occurrences or irrelevant situations. In the case of UNE-P, Verizon's witness mentions a Centrex to UNE-P conversion and the need to load balance as exceptions to the rule that no physical work is required for conversions.[377] Verizon has not shown that the exception should consume the rule or that the situation is even relevant to special access to UNE combinations. Load balancing is a red herring for conversions–if the frame were either balanced or unbalanced before a conversion the same balance/imbalance would exist after the conversion.

AT&T does not dispute that converting active retail service to UNE-L involves a physical disruption of service as a result of the change. However, whether or not a disruption is involved is completely irrelevant to service-to-UNE-combination conversions—Verizon does not provide a UNE combination after a hot-cut is performed.

The third example held up by Verizon, a line sharing to line splitting conversion, may involve a change in the service configuration but only when the customer changes the data CLEC. Unless the data CLEC is changed – something that a customer would not ordinarily opt to do with operating DSL – no disconnection of elements is required.

Finally, Verizon previously asserted that the presence of IDLC might require physical disruption of the UNE-P combination.[378] But when AT&T converts a local service that employs an IDLC loop terminating on the ILEC local switch to UNE-P, there is no need to change the loop to either copper or UDLC. Such a change is required only

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377 *Id.* at 196-7.

378 Verizon Response dated May 31, 2001, Attachment A at 78.

when the customer is hot cut to another carrier's network. As discussed before, where a hot cut occurs, Verizon would not be providing a UNE combination.

It appears that Verizon's quarrel with AT&T's interconnection agreement language, (*i.e.*, that no changes should occur unless requested by AT&T), is not about the conversion process *per se*, but rather about basic network changes that Verizon might make, long after the conversion process, that might affect a converted circuit.[379] It is not AT&T's intent to forever bar basic network changes absent AT&T prior approval.[380] Rather, AT&T's concern is with disconnects and other alterations in the conversion process itself, and subsequent changes to the converted circuit that would degrade the operational support that Verizon provided to the circuit before the conversion.

Just as there is no need to disrupt the physical configuration, there is no *a priori* requirement that the supporting operational processes be degraded or disrupted. The operational support in terms of ordering, provisioning, maintenance and repair for an EEL should be at parity with the special access that the EEL replaces. One of the UNEs clearly identified by the FCC is Operations Support Systems ("OSS"). The OSS UNE, just as a loop or a dedicated transport UNE, is part of a combination that currently operates in an integrated manner to provide access services today. The language reflected in AT&T's § 11.13.5.2 is an explicit acknowledgement of the Commission's requirement set forth in § 51.315(b) of the Commission's Rules that Verizon may not "disconnect" OSS UNEs employed to support wholesale/access UNEs employed to support EELs, if such a "disconnection" degrades the operational support delivered for the combination, such as the EELs.

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[379] Tr. at 247.

Verizon, however, maintains that the operational support of the EEL after conversion from special access should revert to other parity analogues, not special access. It states, for example, that maintenance and repair intervals for an EEL should be equivalent to a retail dial tone line,[381] rather than special access.[382] However, to permit Verizon to degrade operational support for converted special access would violate Verizon's parity obligations under the Act. Just as and for the same reasons that Verizon is obligated to support UNE-P operations in the same manner as its retail operations,[383] so it is obligated to support EELs at their closest analogue, which is special access.[384]

In support of its claim that parity to special access is inappropriate, Verizon relies on a claim that special access is not a "retail analogue" because it is a wholesale service. This is not correct, because retail customers may and do purchase from the access tariffs of Verizon. Verizon itself has acknowledged that special access is a retail service. In the New Jersey § 271 proceeding, Verizon explicitly stated that "[s]pecial access services are retail services, which are sold to end users as well as CLECs."[385] In any event, it is irrelevant whether a parity measure is a "retail" or a "wholesale" measure. What matters is the fact that Verizon provides the same functionality, and compares the performance

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380 *Id.* at 247.

381 *Id.* at 262.

382 *Id.* at 250, 261-2. The difference is quite substantial. The maintenance/repair interval standard for special access is 4 hours, but it is 24 hours for a dial tone line. *Id.* at 262 (Fox).

383 *UNE Remand Order* at ¶ 431.

384 Indeed, Verizon's own guidelines for Special Access to UNE conversions specifically calls for such circuits to remain in the domain of Special Access for at least some period of time. *See* AT&T Exh. 19 at 5.

385 New Jersey Board of Public Utilities, *In The Matter of Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey*, Docket No. TO01090541, Reply Measurements Declaration on Behalf of Verizon New Jersey Inc., Declarants: Julie A. Canny and Marilyn C. DeVito at 7 ¶ 14.

that Verizon delivers to its CLEC customers with the performance Verizon provides to itself or its affiliates. Special access is that analogue to an EEL.

AT&T's position is that an EEL converted from special access must be supported at the same level as the special access. A simple billing change, which the conversion concededly is, should not result in a degradation of service. There is no rational basis for it. Indeed, it appears that Verizon is taking a contrary position simply because of pique that the EEL UNE combination provides less revenue than special access.[386] Verizon's position is contrary to the Act and the Commission's rules, and should not be countenanced.

Sub Issue III.7.b Must Verizon implement an ordering process that enables AT&T to place a bulk order for the conversion of services to UNEs or UNE Combinations?

This is a good news/bad news issue. The good news is that there are a number of points of agreement between AT&T and Verizon on the fundamentals of a bulk conversion process for the conversion of special access to UNE combinations. First, there is no dispute between the parties that a bulk conversion process is mutually beneficial. Verizon's own "Verizon-North and Verizon-South Guidelines for Converting Special Access Services to Loop-Transport Combinations" ("Guidelines")[387] recognizes the value of such a bulk conversion process. Second, Verizon's Guidelines outlines a five-step process for such conversions. AT&T is willing to work within the constructs of

[386] Tr. at 263.

[387] AT&T Exhibit 19.